



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. 822 OF 2013

CONSOLIDATED WITH CAUSE NO. 1149 OF 2014

(Before Hon. Lady Justice Maureen Onyango)

KENYA SCIENTIFIC RESEARCH

INTERNATIONAL TECHNICAL AND INSTITUTIONS WORKERS UNION.....CLAIMANT

VERSUS

SANA INDUSTRIES LIMITED.....RESPONDENT

RULING

By a judgment dated 17th December 2018 written and signed by Merete J. and delivered by myself, the Court entered judgment for the Claimant against the Respondent as follows: -

- i. One (1) month's salary in lieu of notice.*
- ii. Eight (8) months' salary as compensation for unlawful termination of employment.*
- iii. That the Commissioner of Labour, with the involvement of the parties, be and is hereby ordered to compute the grievants' dues in (i) and (ii) above within 120 days of this judgement of court.*
- iv. The computation in (i) and (ii) above shall be pegged on the grievant's gross salaries at the time of termination.*
- v. Mention on 18th April, 2019 for a report on computation by the Commissioner of Labour.*
- vi. The costs of this cause shall be borne by the Respondent.*

A copy of the judgment was in accordance with the directions therein, transmitted to the Labour Commissioner by letter dated 3rd February 2020 with instructions to file a report in Court within 30 days. The delay in transmitting the judgment to the Labour Commissioner for tabulation of award was caused by an application by the Respondent seeking stay of execution pending appeal against the judgment.

The Labour Commissioner appointed Mr. G. I. Tsimuli of County Labour Office, Nyayo House Nairobi to prepare the tabulation.

After meeting with the parties and hearing them and after considering both oral and written submissions by the parties, Mr. Tsimuli prepared a report in which he made his findings and tabulation as follows: -

“Findings

Having read the submission by the management of Sana Industries and the tabulations by the union and analysed all the facts on the file together with verbal submissions from both parties I have established that all the grievants' wages were based on daily rate except for eleven (11) grievants whose wages was on monthly basis. It is therefore believed that the eleven were permanent employees.

That the order (iv) was that the computation of (I) and (II) which is notice and compensation shall be pegged on the grievant's gross salaries at the time of termination.

That the grievants whose wages were based on daily rates had no gross salaries on which to base for computation of (I) and (II) therefore they do not qualify for the two.

That the eleven (11) grievants are the only ones eligible for the terminal dues as such here below are the computed terminal dues payable to them:-

No.	Name	P a y	N o t i c e	Comp ensati on	T ot al
1.	Vincent Ochwada	1 0 , 8 6 0	1 0 , 8 6 0	86,88 0	9 7, 7 4 0/ =
2.	Roselyne Mueni	9 7 0 0	9 7 0 0	77,60 0	8 7, 3 0 0/ =
3.	Christine Mumbua	1 1 , 5 0 0	1 1 , 5 0 0	92,00 0	1 0 3, 5 0 0/ =
4.	Jedida N. Ndolo	9 9 5 0	9 9 5 0	79,60 0	8 9, 5 5 0/ =
5.	Shelton W. Angaya	1 2 , 3 0 0	1 2 , 3 0 0	98,40 0	1 1 0, 7 0 0/ =
6.	Peter Makaya Mwebi	1 0 , 0 0 0	1 0 , 0 0 0	80,00 0	9 0, 0 0 0/ =
7.	Judy Moraa	9 7 0 0	9 7 0 0	77,60 0	8 7, 3 0 0/ =
8.	Moses Katechi Ngei	1 0 , 0 0	1 0 , 0 0	83,20	9 3, 6

		4 0 0	4 0 0	0	0 0/ =
9.	Michael Omondi	1 0 , 4 0 0 0	1 0 , 4 0 0 0	83,20 0	9 3, 6 0 0/ =
10.	Jackson Matata	1 0 , 4 0 0 0	1 0 , 4 0 0 0	83,20 0	9 3, 6 0 0/ =
11.	Kioko Mwalimu	1 0 , 4 0 0 0	1 0 , 4 0 0 0	83,20 0	9 3, 6 0 0/ =

All the above terminal dues are subject to statutory deductions in accordance with Section 49(2) of Employment Act 11 of 2007.”

Both the claimant and the Respondent rejected the tabulation by the Labour Commissioner. I therefore directed that they file their submissions in respect of the findings and recommendations of the Labour Commissioner’s report to enable the court determine and enter final judgment in this matter.

Claimant’s Submissions

The Claimant submits that the judgment of the court was in respect of 94 grievants and computation was ordered in respect of all 94 grievants. That the report confirms the Claimant submitted tabulation in respect of all 94 grievants in both Cause No. 1149 of 2014 and 822 of 2013 as directed in the judgment.

The Claimant submits that in the report of the Labour Commissioner it is clearly indicated that the Respondent declined to provide any tabulation.

It is submitted that by computing terminal dues in respect of only 11 grievants the Labour Commissioner deliberately misconstrued and misinterpreted the judgment which required him only to “*compute the grievants’ dues awarded in (i) and (ii) of the judgment based on the last gross salaries at the time of termination*”.

It is submitted that the judgment of the court did not direct the Commissioner to identify eligibility or otherwise of the 94 grievants. That the report is misplaced as it went beyond the terms of reference/jurisdiction given in the judgment.

It is further submitted that the judgment did not require any party to prepare submissions, that the Respondent did not file any submissions and the reference by the Commissioner that he considered the submissions by the Respondent is factually incorrect and misleading to the Court. It is further the submission of the Claimant that no verbal submissions were made by the parties as alluded to in the report.

The Claimant submitted that the Commissioner’s report is an abuse of Court process as it does not compute dues for 94 grievants as directed in the judgment. That by excluding 83 grievants, the report is illegal and discriminatory. That the Commissioner usurped the powers of the Court. That the report is a nullity and illegal.

Respondent’s Submissions

The Respondent submits that the judgment forwarded to the Labour Commissioner did not contain the names of the individuals in respect of whom he was to tabulate terminal benefits. That this was a gross error in the judgment and required that the Commissioner carries out investigations in order to comply with the judgment.

The Respondent submits that the Labour Commissioner was not supposed to interpret the document but to calculate as directed by the Court. It submits that the judgment is not clear on which grievants are to be paid as this was a consolidated case.

Determination

I have considered the report of the Labour Commissioner and the submissions of the parties. I have further perused the pleadings and judgment.

It is evident from the pleadings that in Cause No. 822 of 2013, the claim was in respect of 94 grievants while in Cause No. 1149 of 2014 the claim was in respect of 54 grievants. The names of the grievants are set out in the documents attached to the claims though not stated in the body of the claim which only refers to the numbers. I have perused and compared the lists in the two cases and confirm that the two lists relate to a total of 148 grievants.

I do not have the benefit of the tabulation filed by the Claimant as the same was not shared with the Court. I however note from the report of the Labour Commissioner that the Claimant submitted tabulations as follows: -

Cause No. 1149 of 2014

94 employees as follows –

1. One month's notice pay Kshs.727,001.00
2. Eight (8) months' pay compensation Kshs.5,816,008.00

Cause No. 822 of 2014

54 employees as follows –

1. One month's notice pay Kshs.1,108,938.00
2. Eight (8) months' pay compensation Kshs.8,689,797.10

Total Kshs.16,341,744.10

My reading of the judgment against the background given above is that the Court was unable to identify the 94 grievants who were qualified for the reliefs granted and left it open for the Labour Commissioner to identify them after consultation with the parties. This conclusion is fortified by the fact that the directions in the judgment with respect to the Labour Commissioner does not make reference to the number of grievants but requires the Labour Commissioner, with the involvement of the parties, to compute grievants dues in respect of one month's salary in lieu of notice and 8 months' salary as compensation.

In the lists that were filed in Court by the grievants, that is Appendix V (1)(a), (b) and (c) in Cause No. 1149 of 2014 and Appendix 111(a) and (b) in Cause 822 of 2013, the Claimant clearly stated the earnings of the grievants. From those two lists, the bulk of the grievants are indicated to be on daily wages while only 10 employees in Cause 822 of 2013 and 12 in Cause 1149 of 2014 are indicated to be on monthly pay. These are:-

Cause No. 822 of 2013

<i>N O.</i>	<i>NAME</i>	<i>MONTHLY PAY (KSHS.)</i>
1.	<i>Judy Moraa O.</i>	<i>9,700</i>
2.	<i>Moses Katechi Ngei</i>	<i>10,400</i>
3.	<i>Michael Omondi Odhiambo</i>	<i>10,400</i>
4.	<i>Kioko Mwalimu</i>	<i>10,400</i>
5.	<i>Jackson Matata</i>	<i>10,400</i>
6.	<i>Shelton Wambuko Angaya</i>	<i>12,300</i>
7.	<i>Roselyne Mueni M.</i>	<i>9,700</i>
8.	<i>Chrisitne Mumbua M.</i>	<i>11,500</i>
9.	<i>Jedida Mumanie Ndolo</i>	<i>9,950</i>
10.	<i>Vincent Ochwada</i>	<i>10,860</i>

Cause No. 1149 of 2014

NO	NAME	MONTHLY PAY (KSHS.)
1.	<i>Erettah M. Mwangangi</i>	10,000
2.	<i>Caroline A. Abongo</i>	11,000
3.	<i>Grace Wanjiku Ndegwa</i>	10,000
4.	<i>Emma N. Nzioki</i>	11,000
5.	<i>Catherine Mmbango Chiti</i>	10,000
6.	<i>Electine A. Kerera</i>	11,000
7.	<i>Carolyne Ndinda Mutinda</i>	11,000
8.	<i>Virginiah Mbula Ndiku</i>	10,000
9.	<i>Judith Nzisa Sila</i>	10,000
10.	<i>Patricia Nduku Simon</i>	9,200
11.	<i>Esther Anyango Ondiek</i>	11,802
12.	<i>Esther Wambui Kariuki</i>	10,000

Of these, No. 1 to 9 in cause 1149 of 2014 are among employees who are Claimants in Cause 1273 of 2013 (consolidated) and are therefore not eligible to benefit under the instant suit. The names of the remaining 3 in the list cannot be traced in the records filed by the Respondent. They are thus not prove to be eligible to benefit from the award herein.

I have further taken into account the submissions by the Respondent at paragraphs 5, 6, 7 and 9 of the Amended Defence in Cause 822 of 2013 in which the Respondent submits: -

5. The following grievants are still in employment of the respondent but their names have been included among the purportedly terminated employees which is not correct.

(i) Judy Moraa

(ii) Bernard Mutara

(iii) Mary Nyachome Kirيامa

(iv) Marion Makine Thomas

6. The following Grievants were former casual employees of the Respondent and they left at their own volition never to resume duty for more than 2 month prior to filing of this claim. It's therefore not true to state that they were dismissed or terminated from employment:-

(i) John Mwinzi – Left 13th July 2013

(ii) Shelton Nambuko Angaya – Absconded

(iii) Roselyn Mueni – Proceeded on maternity leave and has never resumed

(iv) Jedida Munaine Ndolo – Proceeded on leave and never came back.

(v) Vincent Ochwanda – Absconded

7. The Respondents states that the following Grievants have never been employed as casuals or on contract at any time. The Claimant union is put to strict proof thereof.

(i) Brayara Mwana Mbithi

(ii) Susan Kariuki

(iii) Priscah Nyatunge

(iv) Alice Mburu

(v) Martha Mareasinywa

(vi) Doris Kabura Mokaya

(vii) Virginia Weira

9. The following employees whose names appear in the list among those who have sued through the Claimant union have also sued differently in person in cause numbers 1273 of 2013 (Consolidated with Cause nos. 1278 of 2013, 1266 of 2013, 1272 of 2013, 1270 of 2013, 1296 of 2013, 1265 of 2013 St 1271 of 2013 pursuant to Court Order issued on 14th May 2014 before Nzioki Wa Makau J.)

<i>Grace Wanjiru Ndegwa</i>
<i>Judith Nzisa</i>
<i>Electrine Ajiambo Kerera</i>
<i>Emma Nduku nzioki</i>
<i>Catherine Mbanga</i>
<i>Carolyne Awiti Abongo</i>
<i>Caroline Ndinda Mutinda</i>
<i>Brettah Mwikali Mwangangi</i>

In view of the fact that there has been no appeal or application for review of the judgment by either party, and further in view of the rejection of the Commissioner's report by both parties, it falls on this court to tabulate the award.

Having taken into account all the foregoing in totality, my findings are as follows: -

1. That there was a total of 148 grievants named in the Claimant's pleadings in the consolidated suit.
2. That the judgment refers to 94 grievants who are not identified.
3. That the judgment directed the Labour Commissioner to tabulate the dues of grievants who are not specified in the judgment.
4. That it was upon the Labour Commissioner to identify the grievants entitled to the award in view of the fact that the judgment does not identify the said grievants.
5. That the Claimant has not submitted to Court the names of the 94 grievants who in its opinion are entitled to benefit from the award.
6. Having been given an opportunity and having not identified the 94 grievants entitled to the award, the Claimant has not given any justification why the findings and tabulation of the Labour Commissioner should not be adopted by the Court.
7. That from the pleadings on record filed by the Claimant it is evident that the bulk of the grievants were casual employees paid on a daily basis with only 22 having been on regular ("permanent") employment. I have checked the claims and submissions and there is no prayer for the terms of the casual employees to be converted to regular (permanent terms) in accordance with Section 37(1) of the Employment Act. There is thus no basis of assuming that they were not casual employees and therefore entitled to the award in the judgment.

8. That the judgment tabulation by the Labour Commissioner identifies the regular (“*permanent*”) employees listed in the Claimant’s documents, some of whom are grievants in Cause No. 1273 of 2013 (consolidated with Cause nos. 1278 of 2013, 1266 of 2013, 1272 of 2013, 1270 of 2013, 1296 of 2013, 1265 of 2013 and 1271 of 2013 pursuant to Court Order issued on 14th May 2014 before Nzioki Wa Makau J.)

It is for the foregoing reasons that I adopt the tabulation filed by the Labour Commissioner and enter final judgment in terms of the report as follows: -

<i>No.</i>	<i>Name</i>	<i>Pay</i>	<i>Notice</i>	<i>Compensation</i>	<i>Total</i>
1	<i>Vincent Ochwada</i>	10,860	10,860	86,880	97,740/=
2	<i>Roselyne Mueni</i>	9,700	9,700	77,600	87,300/=
3	<i>Christine Mumbua</i>	11,500	11,500	92,000	103,500/=
4	<i>Jedida N. Ndolo</i>	9,950	9,950	79,600	89,550/=
5	<i>Shelton W. Angaya</i>	12,300	12,300	98,400	110,700/=
6	<i>Peter Makaya Mwebi</i>	10,000	10,000	80,000	90,000/=
7	<i>Judy Moraa</i>	9,700	9,700	77,600	87,300/=
8	<i>Moses Katechi Ngei</i>	10,400	10,400	83,200	93,600/=
9	<i>Michael Omondi</i>	10,400	10,400	83,200	93,600/=
10	<i>Jackson Matata</i>	10,400	10,400	83,200	93,600/=
11	<i>Kioko Mwalimu</i>	10,400	10,400	83,200	93,600/=

Final Judgment is therefore entered for the Claimant in favour of the named grievants as set out above in the total sum of Kshs.1,040,490/=.

In view of the fact that the entire claim was prosecuted by the Secretary General of the Claimant who is not an Advocate and was therefore acting in person, **I award the Claimant costs in the sum of Kshs.100,000/=** to include all disbursements and reasonable expenses for prosecution of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 30TH DAY OF APRIL 2021

MAUREEN ONYANGO

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His

Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this+ court has been guided by Article 159(2) (d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MAUREEN ONYANGO

JUDGE